

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Shelton	Team: Squad #11	CCRB Case #: 201903038	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/03/2019 10:30 AM	Location of Incident: en route to the 50th Precinct stationhouse	Precinct: 44	18 Mo. SOL 10/3/2020	EO SOL 5/20/2021	
Date/Time CV Reported Mon, 04/08/2019 3:45 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 04/08/2019 3:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Madeline Cruz	23911	920169	050 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Niurky Lavigat	10878	939788	050 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Madeline Cruz	Abuse: Police Officer Madeline Cruz damaged § 87(2)(b)s property.	

### Case Summary

On April 8, 2019, § 87(2)(b) filed this complaint with the CCRB over the phone after being transferred by 311.

On April 3, 2019, at approximately 10:30 a.m., § 87(2)(b) was at the Bronx County Family Courthouse in the Bronx when she was arrested by PO Madeline Cruz and PO Niruky Lavigat of the 50<sup>th</sup> Precinct for violating an order of protection. Due to mobility issues affecting her legs, § 87(2)(b) had a walking frame, or walker, at the time of the incident. § 87(2)(b) was taken outside to a police vehicle after being arrested. PO Cruz took § 87(2)(b) walker and placed it in the back of the police vehicle which caused the left handbrake to break (**Allegation A: Abuse of Authority**, § 87(2)(g) § 87(2)(b) noticed the damage when she arrived with the officers at the 50<sup>th</sup> Precinct stationhouse.

Body-worn camera footage from the cameras of PO Cruz and PO Lavigat was obtained from IAB (BR 01-02).

### Findings and Recommendations

#### **Allegation A – Abuse of Authority: Police Officer Madeline Cruz damaged § 87(2)(b) s property.**

Footage from the body-worn camera of PO Lavigat was extracted using the program InputAce to present the clearest depiction of this allegation. In one clip (BR 03), PO Cruz is depicted grabbing and rolling § 87(2)(b) walker to the open trunk of her police vehicle after § 87(2)(b) is secured in the backseat. PO Lavigat asks PO Cruz how to close the walker. PO Cruz states that she does not know and that you can “throw it in there like that.” Without folding it, PO Cruz lifts and places the walker into the trunk of the vehicle with the walker’s handles and brakes facing downward toward the very back of the vehicle. Both brakes are depicted fully attached to the handles of the walker. PO Cruz then shuts the trunk. In a second clip (BR 04), PO Lavigat gets out of the vehicle after PO Cruz parks it at the 50th Precinct stationhouse. PO Lavigat passes by the trunk and PO Cruz is briefly depicted attempting to take § 87(2)(b) walker out of the open trunk of the vehicle. The handles and brakes are already outside as PO Cruz holds the right handle and a lower bar on the walker. PO Lavigat stands by the back-right door facing § 87(2)(b) sitting in the back seat with the door open. PO Cruz is heard out of the frame, “Wait one second... I don't know how this goes... this is a brake, right?” § 87(2)(b) looks out of the vehicle toward the rear and confirms that is a brake. PO Cruz states, “I don't know what happened here,” and § 87(2)(b) states that it broke. PO Cruz enters the frame with § 87(2)(b) walker by the open back door. PO Cruz holds the left handle of the walker with her left hand and holds the left brake, now unattached from the handle, with her right hand next to the handle. PO Cruz tries to attach the brake to the handle but it does not work. PO Cruz and PO Lavigat state that “Harry” can fix it.

§ 87(2)(b) testimony was consistent with the video footage in that her walker’s left brake was attached to the left handle before she was placed in the police vehicle and that the brake was then completely unattached from the handle when PO Cruz returned the walker to § 87(2)(b) at the stationhouse (BR 05-06). § 87(2)(b) did not give any instructions to PO Cruz on how to transport the walker but stated that it was intuitive how to fold the walker with a strap under the seat of the walker. § 87(2)(b) did not see PO Cruz place the walker in the trunk of the

vehicle but heard one “loud bang,” which she assumed was caused by PO Cruz throwing or forcefully placing her walker in the vehicle. § 87(2)(b) presented the broken walker during her interview, and displayed that not only had the left brake broken off (BR 07), the right brake was loose and wobbly.

§ 87(2)(g)  
PO Cruz stated that the condition of the walker when it was returned to § 87(2)(b) at the stationhouse was the same as it was before it was placed in the vehicle. She did not see anything broken or that stood out on the walker. She did not recall any brakes on the walker but recalled rubber cords hanging off the handles. When § 87(2)(b) was returned the walker, she did not complain or comment on the condition of the walker and did not state it was broken. PO Cruz explained that there is no specific procedure for arrestees with mobility issues or for securing walking apparatuses or other similar medical equipment but that if it did not fit in her vehicle or there were any issues in securing it, PO Cruz would call for a van or other larger vehicle to come pick it up to avoid any trouble. PO Cruz stated that she has transported similar equipment in a police vehicle multiple times before this incident and never experienced any issues. When presented the above-cited photograph (BR 07), PO Cruz stated did not recall the left brake during the incident appearing as it did in the photograph. She stated § 87(2)(b) complained about many things that day so it is possible she complained that her walker had broken but PO Cruz did not specifically recall.

PO Cruz was presented with the above-cited video clips. PO Cruz identified herself as placing the walker in the vehicle and stating to PO Lavigat, “I don’t know [how to close the walker], you can throw it in there like that.” PO Cruz explained that she did not mean literally “throw” the walker in the back of the vehicle. She meant only to place the walker in the vehicle without folding it since there was enough room in the trunk. PO Cruz acknowledged that § 87(2)(b) informed her at the stationhouse that the brake had become unattached. PO Cruz recognized that the brake appeared to have come off of the handle in the video but did not know if it was broken or could be easily reattached. PO Cruz reiterated that at no point did she intentionally break § 87(2)(b) walker and that no officer made any action that could have resulted in the damage. PO Cruz stated that if any damage was done to the walker during transport, it was not intentional.

PO Lavigat § 87(2)(g) stated that she did not observe PO Cruz take any action that could have resulted in damaging the walker, intentionally or accidentally. PO Lavigat explained she did not have a clear view of PO Cruz when she removed the walker since she was at the side of the vehicle by § 87(2)(b)

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been party (BR 10).
- PO Cruz has been a member of service for 21 years and has been subject of two other allegations in two other CCRB complaints, neither of which was substantiated (see officer history). § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint
- On September 5, 2019, the Office of the New York City Comptroller confirmed that no Notices of Claim had been filed regarding this incident (BR 11).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

---

Squad No.: 11

Investigator:	_____	Inv. Benjamin Shelton	_____
	Signature	Print Title & Name	Date
Squad Leader:	_____	IM Edwin Peña	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date